

CHARTER REVIEW COMMISSION MINUTES

March 7, 2013

The Charter Review Commission met at 5:30 p.m. in the Municipal Building Conference Room on the 7th day of March, 2013, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT:

Ms. Jane Abraham
Mr. Trey Bates
Mr. Doug Cubberley, Vice-Chairman
Mr. Harold Heiple, Chairman
Ms. Samantha Kahoe
Mr. Ken McBride
Mr. Barry Roberts
Mr. Richard Stawicki

ABSENT:

Mr. Bob Thompson
Mr. Kevin Pipes
Mr. Thad Balkman

STAFF PRESENT:

Mr. Jeff Bryant, City Attorney
Ms. Brenda Hall, City Clerk
Ms. Kathryn Walker, Assistant City Attorney

Item 1, being:

CALL TO ORDER AND ROLL CALL.

Item 2, being:

CONSIDERATION OF APPROVAL OF THE CHARTER REVIEW COMMISSION MINUTES OF FEBRUARY 7, 2013.

Member Ezzell moved that the minutes be approved and the filing thereof be directed, which motion was duly seconded by Member Cubberley;

Items submitted for the record

1. Charter Revision Committee minutes of February 7, 2013

and the question being upon approval of the minutes and upon the subsequent directive, a vote was taken with the following result:

YEAS:

Members Abraham, Bates, Cubberley, Kahoe, McBride, Roberts, Stawicki, and Chairman Heiple

NAYES:

None

Chairman Heiple declared the motion carried and the minutes approved; and the filing thereof was directed.

Item 3, being:

CONTINUE DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE II, SECTION 1, OF THE CITY CHARTER REGARDING THE CITY MANAGER REMOVAL PROCESS, ENSURING COMPLIANCE WITH OPEN MEETING ACT REQUIREMENTS, AND FINALIZE LANGUAGE RECOMMENDATION.

Member Ken McBride said language was added in Article II, Section 1, that allows an item to be included on the City Council agenda following an Executive Session (ES) and he thought the Open Meetings Act required a notice period before an agenda item could be added. He asked for clarification on whether or not adding an item during a meeting in progress would be permissible. Mr. Jeff Bryant, City Attorney, said when the agenda is posted there will be an item for ES and an action item after that so two items will be posted on the agenda. He said if Council adjourns out of ES and does not want to act on the next item, they do not have to, but there is adequate notice if they do decide to act.

Member Hal Ezzell noted that the proposed language requiring an affirmative vote from five councilmembers. He said if the Charter Review Committee (CRC) is trying to tighten the language under which the City Manager can be terminated why not require all nine councilmembers to be in attendance when voting on the termination of the City Manager. Mr. Bryant said Staff incorporated language currently in the Charter under Article VIII that requires five affirmative votes of Council to take any action regardless of the number of Councilmembers attending the meeting. He said this will make the language more consistent with current Charter language.

Member Ezzell moved that proposed language in Article III, Section 1, be submitted as a recommendation to Council, which motion was duly seconded by Member Dillingham;

Items submitted for the record

1. Memorandum dated March 4, 2013, to Members of the Charter Review Commission, from Kathryn L. Walker, Assistant City Attorney, through Jeff H. Bryant, City Attorney
2. Proposed revisions to Article II, Section 1, City Manager removal process
3. Contract No. K-0708-32, Addendum No. 1 to Contract No. K-0708-32, Addendum No. 2 to Contract No. K-0708-32, and Addendum No. 3 to Contract K-0708-32

and the question being upon proposed language in Article III, Section 1, being submitted as a recommendation to Council, a vote was taken with the following result:

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| YEAS: | Members Abraham, Bates, Cubberley, Kahoe, McBride, Roberts, Stawicki, and Chairman Heiple |
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| NAYES: | None |
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Chairman Heiple declared the motion carried and proposed language in Article III, Section 1, will be submitted as a recommendation to Council.

Item 4, being:

CONTINUE DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE III, SECTION 6, OF THE CITY CHARTER REGARDING CREATING A MECHANISM UNDER WHICH THE CITY COUNCIL COULD REQUEST INFORMATION REGARDING A SPECIFIC CITY DEPARTMENT.

Member Cubberley said this issue was raised during the 2005 CRC meetings because prior City Managers were not responsive to Council's concerns regarding particular departments or employees. One CRC suggestion at that time was for Council to directly supervise Department Heads, but there were concerns this would change the form of government from Council/Manager to Strong Mayor. There were also concerns with changing Council's role from that of policymakers to daily supervisors.

Member Cubberley said after reviewing State Statute, Article 11, Chapter 10-106, and reviewing proposed language, the proposed language seemed to fall short of what needs to happen. He said Council should have the ability to inquire into any office, department, or agency within the City and investigate municipal affairs and/or direct the City Manager to do so. He said Council may want to bring in an outside counsel or experts to assist in investigating a department, but there is no provision in the Charter that allows Council to be able to do that. He suggested language that states, "Provided, the Council may, by majority vote, inquire into the conduct of any office, department, or agency of the City and investigate Municipal affairs and hire any experts as required or direct the City Manager to investigate and report to Council." Chairman Heiple felt the statute language would leave no doubt as to Council's intent and Member Ezzell said he supported both thoughts. Ms. Kathryn Walker, Assistant City Attorney, asked if Staff will be striking the proposed language and replacing it with the statute language and Member Cubberley said no, statute language should be inserted after the sentence, "Provided, the Council may, by majority vote" then insert the statutory language. He felt Council will usually ask the City Manager for a report or investigation into a department. Member Dillingham agreed, but felt allowing Council to hire an outside expert is important and needed at times when there is not strong leadership from the Manager and Council.

Member Bates said language prior to the proposed language states, "the Council may direct the Manager by resolution, to investigate charges of misconduct or incompetence against any City employee and to report the result thereof." He asked if this language is more duplicitous because the proposed language is broader and more encompassing and Chairman Heiple felt that language is being deliberately ambiguous and the CRC is being deliberately over clear which does not hurt a thing. Member Roberts asked if there is a difference between a resolution and majority vote of the Council and Chairman Heiple said a majority vote is less intense, less informal, and less authoritarian than a resolution. Mr. Bryant said the word *resolution* may have been used to indicate the significance of the types of allegations that may need to come forward. Member Roberts asked if the Charter should require a resolution to direct the City Manager to inquire into the conduct of any department or employee and Chairman Heiple said he did not believe so because specific concerns or questions regarding performance can be less intense than misconduct or incompetence, but Member Roberts point is well taken.

Member Kahoe asked if the word *inquire* presumes Council can go directly to the department to inquire without going through the City Manager or must they go through the City Manager to inquire. Member Cubberley said the intent would be for Council to make inquiries directly into that department without the participation of the City Manager. Member Stawicki said it should still require a formal meeting with the City Manager. Chairman Heiple felt more discussion was needed to avoid conflict with other Charter provisions that restrict Council from dealing directly with City employees. He said councilmembers going directly to employees places the employee in the potential position of undermining the Manager. Member Cubberley suggested adding a provision that states "and hire outside experts to assist," but he felt Council should have the authority to investigate departments without the Manager's involvement. Member Dillingham felt that should require Council action through a resolution.

Item 4, continued:

Mr. Bryant said language that states, "Council may, by a majority vote" is in there because Council has to act as a body in making policies and they can only act by a majority vote. He would strongly recommend the CRC not empower a single Councilmember to go to any department or employee to make any type of inquiry. He said it is very important, in defending actions, to maintain the different roles of policy makers versus dealing in the administrative services primarily for the immunity of the policy makers if they end up in litigation.

Ms. Walker said proposed language would read, "Provided the Council may, by majority vote, inquire into the conduct of any office, department or agency of the City and authorize or provide for such inquiries to investigate Municipal affairs or direct the City Manager to investigate and report to the Council with respect to specific concerns or questions." Member Kahoe asked if that still gives Council the authority to inquire directly into the conduct of a department or employee. Member Dillingham said yes, except Council would inquire through an outside agency, not through a Councilmember. Chairman Heiple said Council can request an inquiry without hiring an outside expert depending on the depth of the inquiry. Mr. Bryant asked how that could be done mechanically. Chairman Heiple suggested adding the language "inquire into the conduct of any office, department, or agency of the City and, if necessary, authorize and provide for such inquiries." Member Dillingham said the CRC needs to distinguish between the ordinary Councilmember's inquiry to a department because they just do not understand how something works opposed to when a Councilmember thinks that something is not quite right and is trying to get to the bottom of it. Member Ezzell said the Council, by resolution, can clearly investigate any sort of inquiry, investigation, report, or direct the Manager to do so and that would not be a prohibitive type of interference because it is departmental wide. Mr. Bryant felt it would be safer to outline parameters.

Chairman Heiple suggested Legal Staff incorporate suggestions into the proposed language to bring back to the Committee in their next meeting.

Items submitted for the record

1. Proposed revisions to Article III, Section 6, Council requesting information regarding a specific City Department

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Item 5, being:

CONTINUE DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE III, SECTION 7, OF THE CITY CHARTER REGARDING CREATING A REQUIREMENT THAT A CITY EMPLOYEE TAKE A LEAVE OF ABSENCE TO RUN FOR PARTISAN POLITICAL OFFICE

In 2005, the CRC recommended that City employees running for partisan office be required to take a leave of absence upon filing for office, but after further discussion the proposal was not brought forward.

Chairman Heiple felt the CRC should address nonpartisan political offices as well as partisan offices because a Judge runs on a non-partisan ticket. Member Stawicki said discussions regarding nonpartisan offices delves into things such as not being able to serve on a school board. Chairman Heiple said there are some state statutes that prohibit citizens from serving on certain boards, a rural cooperative for example, but the Charter can designate specific non-partisan political offices and asked if the City wanted employees serving on a school board.

Item 5, continued:

Member Ezzell said he does not see why a leave of absence should be mandatory and enshrined in a Charter versus making a judgment call based on the circumstances since not all offices are the same. He said running for a school board is a different commitment than running for Governor and Chairman Heiple agreed, but said the school board is non-partisan as well as Judges, Appellate Judges, and City Council.

Member Bates asked how a partisan political office is incompatible with the nonpartisan nature of city employment and Member Dillingham said it is generally the goal of the public servant as opposed to the elected person that may hold the office. She said a public servant is supposed to treat everyone the same and that is the nonpartisan aspiration.

Chairman Heiple said he is impressed with the City of Lawton's Code of Ordinances regarding political activity. Mr. Bryant said the City of Lawton's rules are not in their Charter, it is an ordinance. He said the City of Norman has detailed language in their Personnel Manual. Member Cubberley said there are certain positions that are more visible than other positions where people look upon an employee as a representative of the City so when politics become involved not everyone sees the difference between the role of the candidate versus the role of a representative of the City. Member Ezzell said not all offices being sought are the same. He said there is a huge distinction between a school board and County Commissioner, Judge, District Attorney, etc., where the office sought is equivalent to full time employment and you will leave your job at the City if you obtain that office.

Chairman Heiple said an employee of the City of Lawton cannot be a candidate for any elective office which has a jurisdiction within the geographical city limits of Lawton without complying with the leave provisions for the City of Lawton. Member Bates said although the school board may not be as galvanizing as a race for Governor, if you are going to be out in the public and the public has a hard time delineating you from your employment position then that becomes a problem. He said guidelines are needed to separate the role of candidate and City representative, which should apply to partisan and nonpartisan offices. Member Dillingham said the trigger is how big a voice the candidate has as a representative of the City and how difficult it will be for the voter to separate that voice from the work place.

Member McBride said he likes Lawton's criteria that appear to focus on whether the candidacy of the employee interferes with their official job duties or there is time commitment of being away from the job. He suggested the CRC focus on what is in the best interest of the City rather than how the voter will perceive a candidate who works for the City. CRC should ask if the candidacy interferes with the employee's job performance or takes too much for them to be able to serve the City. He felt this criteria would be very defensible from the City's standpoint. Chairman Heiple said the City of Norman's Personnel Manual requires the City Manager's approval for employees running for political office based on time needed away from regular job duties and the ability to perform job duties. He said he would like the Charter to be consistent with the Personnel Manual. Member Ezzell said he prefers the 2006 proposed Charter language because it is simple, clear, and not subject to interpretation. He felt that being too detailed like what Lawton's done could open the City to allegations of favoritism. Member Stawicki felt that running for partisan office should be in the Charter and any nonpartisan candidacy should be in the Personnel Manual, Code of Ordinances, or both and Committee members agreed. Member Dillingham said the Charter is supposed to be a principle and the biggest principle is that partisan is inconsistent with being employed by the City. She said in nonpartisan offices so much depends upon who you are at the City, how much time the job is going to take, what kind of job it is, do you live in Norman and want to serve on the City of Moore School Board. She said so much is dealt with on an independent basis and the most important pronouncement is that partisan elections are incompatible with working at the City.

Item 5, continued:

Mr. Bryant said the Committee is fooling themselves if they believe nonpartisan elections are not partisan. He said focusing on partisan or nonpartisan is missing the mark. Criteria should focus on the impact to the employees ability to do their job, their ability to represent the office, and if they are working on city time or using their own time, etc.

Chairman Heiple said he would like Staff to incorporate portions of Lawton's language as well as suggestions made during this meeting. Member Cubberley said he did not know how the spirit of Lawton's ordinance could be incorporated into a Charter directive. Member Dillingham suggested the proposed language be presented at a public hearing to gauge the public's reaction. Chairman Heiple said he would like to schedule a public hearing before the CRC's next meeting in April. Ms. Brenda Hall, City Clerk, said a public hearing could be held in late March and she would check the meeting room schedule and e-mail available dates to the Committee.

Items submitted for the record

1. Proposed revisions to Article III, Section 7, City employee's run for partisan political office
2. Oklahoma State Statutes Citationized, Title 11, Cities and Towns, Chapter 1, Oklahoma Municipal Code, Article XXII, General Powers of Municipalities, Section 22-101.1, Political Activities by Municipal Employees – Restrictions
3. City of Lawton, Code of Ordinances, Chapter 17 – Personnel Policies and Procedures, Article 17-2 – Personnel Regulations, Division 178-2-10 – Political Activity

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Item 6, being:

BEGIN REVIEW OF ARTICLE XVI, SECTION 2, TO CONSIDER WHETHER CITY COUNCIL SHOULD BE EMPOWERED TO INCREASE UTILITY RATES NOT MORE THAN THREE PERCENT (3%) ANNUALLY WITHOUT REQUIRING A CITY WIDE VOTE.

Chairman Heiple said discussion on a rate increase will be deferred until May.

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Item 7, being:

BEGIN REVIEW OF ARTICLE XVII, SECTION 2, TO CONSIDER WHETHER EMPLOYEE COMPENSATION LANGUAGE NEEDS TO BE MODERNIZED.

Due to time constraints, Chairman Heiple said Article XVII, Section 2, will be discussed at the next meeting.

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Item 8, being:

REVIEW ARTICLE XX TO CONSIDER AMENDING OR UPDATING THE REAPPORTIONMENT COMMISSION PROCESS OR PROCEDURE.

Due to time constraints, Chairman Heiple said Article XX will be discussed at the next meeting.

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Item 9, being:

REVIEW WHETHER OR NOT THERE SHOULD BE A SCHEDULED REVIEW OF THE CHARTER WITHIN THE CHARTER ITSELF.

Due to time constraints, Chairman Heiple said this topic will be discussed at the next meeting.

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Item 10, being:

ADJOURNMENT.

Chairman Heiple declared the meeting adjourned at 6:35 p.m.